

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

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|--------------------|-----|-----------------------------|
| FRANK MICHAEL NEFF | : | |
| Petitioner | : | |
| v | : | Civil Action No. RDB-06-804 |
| WARDEN | : | |
| Respondent | : | |
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MEMORANDUM

The above-captioned case was filed on March 21, 2006, alleging that the complaining witness in Mr Neff's criminal case was coached to lie by the social worker investigating claims of child abuse. Paper No. 1. Neff asserts that no child abuse occurred, that he is innocent, and that he was not permitted to produce testimony from witnesses that would clear him of all charges. *Id.* Although the *pro se* pleading was construed as a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, the sole relief sought is monetary damages. Thus the pleading is more properly viewed as a civil rights claim filed pursuant to 42 U.S.C. § 1983.

This Court is obliged by 28 U.S.C. §1915A to screen prisoner complaints and dismiss any complaints that are frivolous, malicious or fail to state a claim upon which relief may be granted. In deciding whether a complaint is frivolous "[t]he district court need not look beyond the complaint's allegations It must, however, hold the *pro se* complaint to less stringent standards than pleadings drafted by attorneys and must read the complaint liberally." *White v. White*, 886 F. 2d 721, 722-723 (4th Cir. 1989). When the instant claim is so reviewed, it clearly must be dismissed.

A claim for damages based upon an alleged wrongful criminal conviction may not be entertained unless the underlying conviction has been reversed, expunged, invalidated, or

impugned. *See Heck v. Humphrey*, 512 U. S. 477, 487 (1994). Neff is currently serving prison time for the criminal charges which form the basis of his claim for monetary damages. Thus, his claims for damages cannot be entertained by this Court unless he has first successfully challenged his criminal conviction. In the event that the state courts agree with his assessment of the events surrounding his arrest and as a result overturn his conviction, Neff may re-file his constitutional claim for damages. Until then, his claim is premature. A separate Order dismissing the complaint without prejudice follows.

April 19, 2006
Date

/s/

RICHARD D. BENNETT
UNITED STATES DISTRICT JUDGE